

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

TOM W. DAVIDSON
202.887.4011/fax: 202.887.7719
tdavidson@akingump.com

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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: MB Docket No. 05-317
KTRK-TV, Houston, Texas, Facility ID No. 35675
RESPONSE TO OPPOSITION OF ECHOSTAR SATELLITE L.L.C.
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

KTRK Television, Inc. ("**KTRK Inc.**"), the licensee of KTRK-TV and KTRK-DT, Houston, Texas, Facility ID No. 35675, by its attorneys, hereby submits this reply ("**Reply**") to the Opposition of EchoStar Satellite L.L.C. ("**Opposition**") to KTRK Inc.'s request for a six-month waiver ("**Testing Waiver**") of the April 30, 2006 digital signal testing implementation date ("**April Deadline**").¹ The Opposition asserts that, although KTRK-DT has neither received a tentative channel designation nor been found to have lost interference protection by the Federal Communications Commission ("**FCC**" or "**Commission**"), as required by Section 339(a)(2)(D) of the Communications Act ("**Section 339**"), it nevertheless is subject to the April Deadline. The Opposition further asserts that the Commission must reject the Testing Waiver because KTRK Inc. has not provided clear and convincing evidence that use of a side-mounted antenna is both necessary and unremediable. As explained herein, the Media Bureau ("**Bureau**") should reject the Opposition because KTRK-DT is not subject to the April Deadline. To the extent that the Bureau determines that KTRK-DT is subject to the April Deadline, the Bureau should deny the Opposition because grant of a Testing Waiver with respect to KTRK-DT is consistent with the requirements set forth in Section 339.

¹ The instant Reply is filed pursuant to the November 17, 2005 public notice ("**Waiver PN**") released by the Federal Communications Commission ("**FCC**" or "**Commission**") See TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be filed by November 30, 2005 or February 15, 2007, DA 05-2979, *Public Notice* (rel. Nov. 17, 2005).

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KTRK-DT Is Not Subject to the April Deadline. In the Testing Waiver, KTRK Inc. demonstrated that KTRK-DT is not subject to the April Deadline because it has neither received its current digital channel as its post-transition channel nor been found by the FCC to have lost interference protection, as required by Section 339.² Indeed, the Opposition acknowledges that (1) the April Deadline does not apply to television stations that have neither lost inference protection nor received a tentative channel designation; (2) the Commission has not acted on KTRK-DT's pending request for a waiver of the July 1, 2005 replication deadline ("**Replication Waiver Request**"); and (3) KTRK-DT will not lose interference protection if "the Commission were to grant its pending request for waiver of the maximization deadline."³ Nevertheless, the Opposition complains that KTRK-DT is wrongfully attempting to avoid the April Deadline. Such an argument must be rejected, as KTRK Inc. itself does not dispute that KTRK-DT may lose interference protection if the Commission does not grant the Replication Waiver Request. Until such time, however, KTRK-DT simply does not satisfy the statutory criteria subjecting it to the April Deadline.

KTRK-DT's Use of a Side-Mounted Antenna is Necessary and Unremediable. The Opposition further contends that KTRK Inc. has not provided adequate evidence to show that its use of a side-mounted antenna is necessary.⁴ However, as set forth in more detail in the Testing Waiver, KTRK-DT's use of a side-mounted antenna is, in fact, necessary because the top tower mast positions on the KTRK Inc. tower are occupied by the KTRK-TV antenna. Moreover, KTRK-DT's use of a side-mounted antenna is unremediable because KTRK Inc. intends to use the KTRK-TV antenna, its current NTSC antenna, as its DTV antenna post-transition.⁵

Prior to deciding on the use of a side-mounted antenna as an interim measure, KTRK Inc. considered a number of ways to increase KTRK-DT's coverage, including the use of a top

² See Letter to Ms. Marlene H. Dortch, Secretary, FCC, from Tom W. Davidson, Esq., MB Docket No. 05-317 (filed Nov. 30, 2005) at 2-3 ("**Testing Waiver**"); 47 U.S.C. § 39(a)(D)(vii) (establishing dates on which satellite subscribers may begin to request digital signal strength tests).

³ See Opposition at 62-63.

⁴ See Opposition at 61-62. The Opposition also contends that KTRK-DT has not experienced a substantial decrease in its digital coverage area as a result of its use of a side-mounted antenna because this level of coverage amounts to 98.2% of the population served by KTRK-DT's initial DTV allotment. See *id.* at 62. KTRK-DT, however, is unable to serve 52,383 households predicted to be served by KTRK-DT's initial DTV allotment because of the current side-mounted position of its antenna.

⁵ KTRK Inc. will use its current NTSC channel as its post-transition DTV channel.

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mounted antenna, which would require additional tower reinforcement, at a minimum, or, more likely, construction of a new tower. KTRK Inc. ultimately concluded that none of these options was viable within the time frame with which KTRK-DT was required to build out its digital facilities. Specifically, broadcasters in television markets 11 through 30, including KTRK Inc., were required to commence digital operations by November 1, 1999.⁶ Due to the large number of broadcasters subject to the November 1, 1999 deadline, the required equipment necessary for such alternatives was not readily available in the marketplace. Other resources, such as a qualified tower crew to install digital equipment, were equally constrained. In light of these challenges, KTRK-DT determined that the use of a side-mounted antenna, which it was able to obtain from a reputable manufacturer, was the most viable option to enable it to comply with the November 1, 1999 deadline.⁷

Conclusion. For the reasons set forth herein, KTRK Inc. respectfully requests that the Bureau deny the Opposition and grant a Testing Waiver for KTRK-DT.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Nazifa Sawez, Esq.

⁶ See In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, 12 FCC Rcd 12809, 12841 ¶ 76 (1997) (“**Fifth Report and Order**”). The Commission stated that it would grant an extension of the November 1, 1999 deadline to broadcasters who have been unable to complete construction of their digital facilities due to circumstances outside of the control of the licensee, including the “lack of equipment necessary to transmit a digital signal.” See *id.* at ¶ 77.

⁷ Despite KTRK Inc.’s best efforts to commence digital operations by November 1, 1999, it was necessary to file for an extension of this deadline pursuant to the Fifth Report and Order. KTRK Inc. filed its digital license application in February 2000.